

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 35-005-15-1-5-00287-15
Petitioners: Yvonne C. Hiles & Von Inc.¹
Respondent: Huntington County Assessor
Parcel: 35-05-14-100-259.100-005
Assessment Year: 2015

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their 2015 assessment appeal with the Huntington County Assessor on August 19, 2015.
2. On October 16, 2015, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on May 10, 2017.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on June 13, 2017. She did not inspect the property.
6. Tony L. Hiles appeared *pro se*.² County Assessor Terri Boone and Deputy County Assessor Julie Newsome appeared for the Respondent. All of them were sworn.

Facts

7. The subject property is an unimproved lot located on Lindley Street in Huntington.
8. The PTABOA determined a total land assessment of \$3,400.
9. The Petitioners requested a total land assessment of \$100.

¹ The letter initiating review at the local level indicates Yvonne C. Hiles and Von Inc., each have "undivided one-half interest" in the subject property.

² Mr. Hiles signed the Form 131 as Vice President and Chief Operating Officer of Von Inc.

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: "Description of subject property,"
Petitioners Exhibit 2: Flood zone map,
Petitioners Exhibit 3: "Assessment summary" from 2008 to 2014,
Petitioners Exhibit 4: 2010 Notice of Assessment of Land and Structures (Form 11),
Petitioners Exhibit 5: Subject property record card,
Petitioners Exhibit 6: Property record card for 228 North Brawley Street,
Petitioners Exhibit 7: 2002 REAL PROPERTY ASSESSMENT GUIDELINES pages 9, 43, 44, 45, 46, 47, 48, 49 and 50.

Respondent Exhibit 1: Form 131,
Respondent Exhibit 2: 2015 subject property record card,
Respondent Exhibit 3: Aerial photograph of the subject property,
Respondent Exhibit 4: "Sales analysis."

Board Exhibit A: Form 131 with attachments,
Board Exhibit B: Hearing notice dated May 10, 2017,
Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Objections

- 11. Mr. Hiles objected to Respondent's Exhibit 4 on the grounds that the Respondent failed to attach any sales disclosures to the analysis. Mr. Hiles also argued that the Respondent failed to utilize properties encumbered by "drainage ditches or other encumbrances." Finally, Mr. Hiles argued the sales utilized lack value because they occurred outside the March 1, 2015, assessment "time frame." In response, the Respondent argued that "the analysis was to show the actions of buyers in the past and future" and was performed to "show the Petitioners they were fairly assessed." The ALJ deferred ruling on the objection.
- 12. Mr. Hiles' objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board overrules the objection and Respondent's Exhibit 4 is admitted.

Contentions

13. Summary of the Petitioners' case:

- a) The subject property's 2015 assessment is too high. Roughly half of the lot is located in a flood zone. A drainage ditch located at the front of the lot prevents access to the street. Additionally, a concrete wall located at the back of the lot precludes any rear access to the street. The assessment of this lot has "varied" from 2008 to 2014, indicating the current assessment is incorrect. *Hiles argument; Pet'rs Ex. 1, 2, 3, 4.*
- b) In an effort to prove the lot is over assessed, the Petitioners presented an assessment of a nearby "base lot" located at 228 North Brawley Street. This property is currently assessed at \$3,400. This lot is currently receiving a negative influence factor of 50% even though it "does not suffer from the same restrictions the subject property does." This lot does not have a drainage ditch and it is "level and useable for the purpose of what a city lot would be." *Hiles argument; Pet'rs Ex. 6.*
- c) Several "standards" regarding influence factors are set forth in the Guidelines. Because the drainage ditch "has a lower elevation," the lot suffers from "uneven topography." The lot is under-improved, has an abnormal shape and size, and has "unusual restrictions" due to the drainage ditch. For these reasons, negative influence factors should be applied to this lot. *Hiles argument; Pet'rs Ex. 7.*

14. Summary of the Respondent's case:

- a) The Petitioners are being "fairly assessed" according to other land sales in the area. In an effort to prove the property is correctly assessed, the Respondent offered a "vacant land analysis" utilizing seven sales that occurred between May 5, 2011, and November 28, 2016. According to this analysis, the price per square foot ranged from \$0.27 to \$0.70. The subject property is currently assessed at \$0.39 per square foot. *Newsome argument; Resp't Ex. 4.*

Burden of Proof

15. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
16. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is

correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

17. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
18. Here, the parties agree that the total assessed value did not change from 2014 to 2015. The Petitioners failed to offer any argument the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

Analysis

19. The Petitioners failed to make a prima facie case for reducing the 2015 assessment.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Petitioners offered an aerial flood map of the subject property's neighborhood that appears to indicate the property is located in a flood zone and prone to flooding. They also testified the property is encumbered by a large drainage ditch and lacks street access. Finally, they claim the lot has abnormal topography, and abnormal shape and size. While these factors are likely detrimental to the subject property's value, they do not establish the assessment is incorrect. The Petitioners failed to quantify the actual effects of their claim or quantify a more

accurate value. The Petitioners needed to offer probative evidence to establish the effect those factors have on the properties' market value-in-use as of the assessment date. The Board cannot simply pick a value for lower assessments. It is up to the Petitioners to prove the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers East & West*, 805 N.E.2d at 478. Without more, the Petitioners' aerial flood map and related arguments are not enough to make a prima facie case for reducing the assessment.

- d) The Petitioners also offered a comparison of their assessment to that of a purportedly comparable property.³ Parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing districts boundary. Ind. Code §6-1.1-15-18(c)(1). The purportedly comparable property is located within the same taxing district and appears to meet the boundary requirements.
- e) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words the proponent must provide the type of analysis that *Long* contemplates for the sales comparison approach. *Id.*; *see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected the value).
- f) While the Petitioners introduced a property record card for the purportedly comparable property, they failed to offer significant testimony comparing specific features and characteristics to the subject property. Instead they focused on the fact that the purportedly comparable property is a "base lot" with no obstructions. Moreover, they failed to offer any explanation or value adjustments for the differences between the subject property and the purportedly comparable property. Additionally, they failed to offer any authority suggesting that utilizing only one purportedly comparable property suffices to establish a subject property's value. For these reasons, their evidence lacks probative value.

³ The Petitioners implicitly raise the issue of a lack of uniformity and equality in assessments. As the Tax Court explained in, *Westfield Golf Practice Center*, the focus of Indiana's assessment system has changed from the application of a self-referential set of regulations to a question of whether a property's assessment reflects the external benchmark of market value-in-use. *See, Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One way to prove a lack of uniformity and equality under Article X, Section 1 of the Indiana Constitution is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals. *Id.* at 399 n.3. The taxpayer in *Westfield Golf Practice Center* lost its appeal because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* at 399. Here, the Petitioners' did not make a showing for a change in the assessment based on lack of uniformity and equality.

- g) Consequently, the Petitioners failed to make a prima facie case for reducing the 2015 assessment. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

20. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2015 assessment will not be changed.

ISSUED: September 11, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.